

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION**

**THE UNITED STATES OF AMERICA,
For the Use and Benefit of
MONDELLO SCAFFOLDING &
SHORING, INC.**

Plaintiff,

*

CASE NO. _____

versus

*

JUDGE: _____

**ENGINEERING DESIGN
TECHNOLOGIES, INC. and
LIBERTY MUTUAL
INSURANCE COMPANY**

Defendants

*

MAGISTRATE: _____

COMPLAINT

NOW INTO COURT, through undersigned counsel, comes the plaintiff, **THE UNITED STATES OF AMERICA, For the Use and Benefit of MONDELLO SCAFFOLDING & SHORING, INC.**, which asserts this action under the authority and provisions of The Miller Act, 40 U.S.C.A. Sections 3131 *et.seq*, and in support of this cause of action alleges the following:

1.

The Plaintiff in interest in this action is **MONDELLO SCAFFOLDING & SHORING, INC.**, a Louisiana corporation doing business and having its principal business and registered

office in Louisiana at 605 Sligo Road, Bossier City, Louisiana 71112 (hereinafter the “Plaintiff” or “Mondello”).

2.

Made defendants herein are the following:

1. **ENGINEERING DESIGN TECHNOLOGIES, INC.**, a foreign corporation which maintains its principal business office at 1705 Enterprise Way, Suite 200, Marietta, Georgia 30067 (hereinafter “EDT”); and

2. **LIBERTY MUTUAL INSURANCE COMPANY**, a foreign insurance corporation authorized to do and doing business in Louisiana, which has its domiciliary address at 175 Berkeley Street, Boston, Massachusetts 02116 (hereinafter “Liberty Mutual”; EDT and Liberty Mutual are sometimes jointly referred to herein as “Defendants”).

3.

This action arises under 40 U.S. C. A. Sections 3131, *et seq*, also known as The Miller Act, which provides this court with exclusive jurisdiction over the causes of action asserted against the Defendants named above. In further establishment of this court’s jurisdiction, under the above federal statute, Plaintiff shows that this cause of action is based upon a claim against a general contractor and surety that Plaintiff has not been paid for labor, material, or equipment supplied the prosecution of work provided under subcontracts of a prime contract on a federal project on which labor was last performed and materials and equipment were last supplied by Plaintiff on or about October 1, 2018.

4.

Venue is proper before this court inasmuch as Plaintiff’s work under the subcontracts on the federal project was performed and was to be performed within the Western District of

Louisiana.

5.

At all times pertinent to this action, EDT contracted with the United States of America, Department of the Navy, Naval Facilities Engineering Command Southeast, located at IPT South Central Building 135, Jacksonville, Florida 32212-0030 (hereinafter the "Dept. Of Navy" or "Owner"), for the purpose of EDT's providing construction work for a federal project known as *Repair Airfield Drainage System, Barksdale Air Force Base, Bossier City, Louisiana*, Contract Project Number N69450-13-D-1764-0002 (hereinafter the "Prime Contract") located at 1049 Davis Avenue E, Barksdale AFB, Louisiana 71119 (hereinafter the "Project").

6.

Mondello entered into a Purchase Order dated February 28, 2018 with EDT to perform portions of the EDT scope of the work of the Project consisting of providing 109 construction mats (8'x16'x6") at 13 mats per truckload, which included the furnishing of labor, materials, and equipment as stated and freight charges to job site and return.

7.

Upon information and belief, Liberty Mutual issued a payment and performance bond for EDT as its principal in favor of the Owner as obligee on the Project and is, therefore, liable as surety for unpaid amounts owed by EDT to Mondello under the Purchase Order.

8.

Mondello provided the construction mats and other materials ordered by EDT as shown by the copy of the EDT purchase order attached to this complaint as Exhibit "A." Said materials are, upon information and belief, still on the construction site and may be still in use by EDT.

9.

The amount due and owing by EDT under the purchase order, for labor, services, and/or materials and equipment, through October 1, 2018, is \$18,166.38.

10.

Upon information and belief, EDT has been paid by the Owner for all of the Work of the Project that was performed by Mondello.

11.

Despite the submission of invoices and the provision of written notice of Mondello's claim, and amicable demand for payment, EDT and Liberty Mutual have failed and refused to pay Plaintiff the balance due and owing.

12.

Plaintiff is entitled to a judgment over and against Defendants, in solido, in the total principal amount of \$18,166.38 for the unpaid principal balance, together with 1.5% contractual interest from the date(s) payments were due until paid, judicial interest as provided under federal law, court costs, including the costs expert witnesses, lien notice costs of \$1,000.00, and

reasonable attorney fees as provided under applicable law.

WHEREFORE, PLAINTIFF, THE UNITED STATES OF AMERICA, For the Use and Benefit of MONDELLO SCAFFOLDING & SHORING CO., INC., PRAYS that this Complaint be filed of record and that after all legal proceedings have been had, there be judgment in favor of the Plaintiff, **THE UNITED STATES OF AMERICA, For the Use and Benefit of MONDELLO SCAFFOLDING & SHORING CO., INC.** and against Defendants, **ENGINEERING DESIGN TECHNOLOGIES, INC. and LIBERTY MUTUAL INSURANCE COMPANY**, in solido, in the principal amount of **\$18,166.38** plus interest on the principal amount at contractual or legal rates until paid, Plaintiff's reasonable attorney fees, and all court costs, including the costs of expert witnesses.

Respectfully submitted,

Barham & Warner, L.L.C.

S/: Vicki C. Warner

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ATTORNEYS FOR PLAINTIFF, MONDELLO
SCAFFOLDING & SHORING CO., INC.

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

THE UNITED STATES OF AMERICA for the use and benefit of
MONDELLO SCAFFOLDING & SHORING, INC.

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Barham & Warner, LLC, 920 Pierremont, Suite 412, Shreveport, LA
71106; Ph. 318-865-0081

DEFENDANTS

ENGINEERING DESIGN TECHNOLOGIES, INC., and LIBERTY
MUTUAL INSURANCE COMPANY

County of Residence of First Listed Defendant **MARIETTA, GA**
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input checked="" type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
40 USCA 3131 et. seq.

Brief description of cause:

Claim by supplier of labor/materials to enforce Miller Act lien against contractor and bond company

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

18,166.38

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Foote

DOCKET NUMBER 5:18-cv-00914

DATE 07/02/2019 SIGNATURE OF ATTORNEY OF RECORD

Wick C. Warner

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE